IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

CWP No.885 of 2007

Reserved on 12.10.2007

Date of decision 1.11.2007

Naginder Kumar Petitioner

Vs.

HPSEB and anr. Respondents

Coram:

The Hon'ble Mr. Justice Rajiv Sharma, Judge.

Whether approved for reporting?[1] Yes.

For the Petitioner: Mr.G.R.Palsra, Advocate.

For the respondents: Mr.Shrawan Dogra, Advocate,

Rajiv Sharma, J.

A challenge has been laid to the Award passed by the Labour Court-cum-Industrial Tribunal, Dharamshala District Kangra H.P. Camp at Mandi on 19.3.2007 in Reference No.107 of 2005.

The brief facts necessary for the adjudication of this petition are that the State Government had made the following reference to the Labour Court-cum-Industrial Tribunal vide a letter dated 2.7.2005:

> Whether the termination of services of Shri Naginder Kumar son of Sh.Goverdhan workman by the Executive Engineer, HPSEB (Electrical) Division, Mandi H.P. w.e.f. 18.2.2000 without complying the provisions of the Industrial Disputes Act, 1947 is proper and justified? If not , to what relief of consequential service benefits,

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[1] Whether reporter of local papers is allowed to see the judgment? Yes.

including reinstatement, seniority, back wages and amount of compensation the above aggrieved workman is entitled ?

In sequel to the reference made by the State Government the petitioner, hereinafter, referred to as the workman for convenience sake had filed statement of claim primarily contending therein that his retrenchment effected on 17.2.2000 is in violation of mandatory provisions of the Industrial Disputes Act, 1947. The employer had filed reply to the statement of claim filed by the workman. The workman had filed the rejoinder to the reply filed by the employer. The Labour Court had passed the Award on 19.3.2007.

Mr.G.R.Palsra had strenuously argued that the award dated 19.3.2007 was not sustainable in the eyes of law since according to him the Labour Court had to decide the reference on its merits once the same had been referred to it by the State Government. Mr.Sharwan Dogra, learned counsel appearing for the respondents had supported the Award dated 19.3.2007.

I have heard the learned counsel for the parties and have gone through the records carefully.

The workman was engaged on 13.5.1998 and was retrenched on 17.2.2000. He started visiting the office of the employer seeking his re-engagement and it was only when he was not offered appointment he raised his demand with the employer on 29.5.2003. The Labour Officer-cum-Conciliation Officer had submitted failure report to the State Government pursuant to which the reference was made on 2.7.2005. In these circumstances it could not be held that there was any inordinate delay in raising the industrial dispute. The Labour court was bound to consider the other contentions made by the workman on its merits more particularly that he was prevented from completing 240 days by the

employer which amounts to unfair practice and the workmen junior to him were retained while retrenching him on 17.2.2000.

Accordingly it is held that there was no inordinate delay in raising the dispute by the workman and finding recorded by the Labour Court to the contrary is liable to be interfered by this Court. It is also well settled by now that the Labour court cannot dismiss the claim on the ground of delay and laches once the same has been referred to it by the state Government. The Labour Court at the most can take into consideration delay, if any, in raising the dispute at the time of granting the relief.

The Hon'ble Supreme Court in latest judgment in ***Karan Singh Versus Executive Engineer Haryana State Marketing Board***, 2007 (II) Scale 577 has held that the Labour Court is bound to decide the reference made by the State Government and the same is required to be adjudicated upon the merits without touching the aspect of delay and laches. Their Lordships have held as under:

> "In the appeal the main issue which arises for determination is as follows:
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> "Whether the reference of the Petitioner/workman could be rejected on the sole ground of delay when Government itself made reference for adjudication of the issue/ dispute."
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> In the case of Management of Express Newspapers (Private) Ltd. v. The Workers and Ors. reported in (AIR 1963 SC 569) it has been held that the jurisdiction of the Tribunal in dealing with industrial disputes is limited to the points mentioned in Section 10(4).
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> In the case of National Engineering Industries Ltd. v. State of Rajasthan and Ors. (2000) 1 SCC 371) it has been held vide para 24 that the High Court has jurisdiction to entertain a writ petition when there is an allegation that there is no industrial dispute which could be the subject-matter of reference for adjudication to the Industrial Tribunal under Section 10. This is because existence of the industrial dispute is a jurisdictional fact. Absence of such jurisdictional fact results in the invalidation of the reference. For example, even under the Income Tax Act, 1961 as it stood earlier,

the Income Tax Officer must have reason to believe escapement of income. This "reason to believe" is a jurisdictional fact, therefore, writ petitions were maintainable in cases where the High found absence of basic facts for reopening the assessment. The industrial Tribunal under Section 10 gets its jurisdiction to decide an industrial dispute only upon a reference by the appropriate government. The Industrial Tribunal cannot invalidate the reference on the ground of delay. If the employer says that the workman has made a stale claim then the employer must challenge the reference by way of Writ petition and say that since the claim is belated, there was no industrial dispute. The Industrial Tribunal cannot strike down the reference on this ground. In the present case, the Industrial Tribunal has held that the employer has violated Section 25F. If so, the order of termination is bad in law. It has to be struck down. In the present case, it has been struck down. However, the Tribunal had refused to grant any relief on the ground of delay. The Tribunal has no authority to invalidate the reference, particularly when it has found that the order of termination violates Section 25F of the Industrial Disputes Act, 1947.

In Sapan Kumar Pandit v. U.P. State Electricity Board and Ors. (2001) 6 SCC 222), it has been held, vide para 15, as follows:

> "There are cases in which lapse of time had caused fading or even eclipse of the dispute. If nobody had kept the dispute alive during the long interval, it is reasonably possible to conclude in a particular case that the dispute ceased to exist after some time. But when the dispute remained alive though not galvanized by the workmen or the Union on account of other justified reasons, it does not cause the dispute to wane into total eclipse. In this case, when the Government have chosen to refer the dispute for adjudication under Section 4-K of the U.P. Act the High Court should not have quashed the reference merely on the ground of delay. Of course, the long delay for making the adjudication could be considered by the adjudicating authorities while moulding its reliefs. That is a different matter altogether. The High Court has obviously gone wrong in axing down the order of reference made by the Government for adjudication. Let the adjudicatory process reach its legal culmination."

So far as delay in seeking the reference is concerned, no formula of universal application can be laid down. It would depend on facts of each individual case.

However, certain observations made by this Court need to be noted. In Nedungadi Bank Ltd. v. K.P. Madhavankutty and Ors. (2000 (2) SCC 455) it was noted at paragraph 6 as follows:

> "6. Law does not prescribe any time-limit for the appropriate Government to exercise its powers under Section 10 of the Act. It is not that this power can be exercised at any point of time and to revive matters which had since been settled. Power is to be exercised reasonably and in a rational manner. There appears to us to be no rational basis on which the Central Government has exercised powers in this case after a lapse of about seven years of the order dismissing the respondent from service. At the time reference was made no industrial dispute existed or could be even said to have been apprehended. A dispute which is stale could not be the subject-matter of reference under Section 10 of the Act. As to when a dispute can be said to be stale would depend on the facts and circumstances of each case. When the matter has become final, it appears to us to be rather incongruous that the reference be made under Section 10 of the Act in the circumstances like the present one. In fact it could be said that there was no dispute pending at the time when the reference in question was made. The only ground advanced by the respondent was that two other employees who were dismissed from service were reinstated. Under what circumstances they were dismissed and subsequently reinstated is nowhere mentioned. Demand raised by the respondent for raising an industrial dispute was ex-facie bad and incompetent."

In S.M. Nilajkar and Ors. v. Telecom District Manager, Karnataka (2003 (4) SCC 27) the position was reiterated as follows: (at para 17)

> "17. It was submitted on behalf of the respondent that on account of delay in raising the dispute by the appellants the High Court was justified in denying relief to the appellants.

We cannot agree. It is true, as held in M/s. Shalimar Works Ltd. v. Their Workmen (supra) (AIR 1959 SC 1217), that merely because the Industrial Disputes Act does not provide for a limitation for raising the dispute it does not mean that the dispute can be raised at any time and without regard to the delay and reasons therefor. There is no limitation prescribed for reference of disputes to an industrial tribunal, even so it is only reasonable that the disputes should be referred as soon as possible after they have arisen and after conciliation proceedings have failed particularly so when disputes relate to discharge of workmen wholesale. A delay of 4 years in raising the dispute after even reemployment of the most of the old workmen was held to be fatal in M/s. Shalimar Works Limited v. Their Workmen (supra) (AIR 1959 SC 1217), In Nedungadi Bank Ltd. v. K.P. Madhavankutty and others (supra) AIR 2000 SC 839, a delay of 7 years was held to be fatal and disentitled to workmen to any relief. In Ratan Chandra Sammanta and others v. Union of India and others (supra) (1993 AIR SCW 2214, it was held that a casual labourer retrenched by the employer deprives himself of remedy available in law by delay itself, lapse of time results in losing the remedy and the right as well. The delay would certainly be fatal if it has resulted in material evidence relevant to adjudication being lost and rendered not available. However, we do not think that the delay in the case at hand has been so culpable as to disentitle the appellants for any relief. Although the High Court has opined that there was a delay of 7 to 9 years in raising the dispute before the Tribunal but we find the High Court factually not correct. The employment of the appellants was terminated sometime in 1985-86 or 1986-87. Pursuant to the judgment in Daily Rated Casual Employees Under P&T Department v. Union of India (supra) (AIR 1987 SC 2342), the department was formulating a scheme to accommodate casual labourers and the appellants were justified in awaiting the outcome thereof. On 16-1-1990 they were refused to be accommodated in the scheme. On 28-12-1990 they initiated the proceedings under the Industrial Disputes Act followed

by conciliation proceedings and then the dispute was referred to the Industrial Tribunal cum-Labour Court. We do not think that the appellants deserve to be non suited on the ground of delay."

The above position was highlighted recently in Employers in relation to the Management of Sudamdih Colliery of M/s Bharat Coking Coal Ltd. v. Their Workmen represented by Rashtriya Colliery Mazdoor Sangh (2006 (1) Supreme 282) and Chief Engineer, Ranjit Sagar Dam & Anr. v. Sham Lal (2006(9) SCC 124).

In the aforesaid background, we would have normally set aside the award of the Labour Court and the High Court. But because of long passage of time, it would be inappropriate, particularly when appellant has not even offered any semblance of explanation for the delay."

The Labour Court ought to have taken into consideration the pleas raised by the workman concerning his retrenchment effected on 17.2.2000. The workman had contended that the provisions of the Industrial Disputes Act, 1947 have not been followed inasmuch as, no retrenchment compensation was paid to him at the time of his retrenchment and workmen junior to him were also retained. This question need not detain the Court any further since the matter is being remanded back to the Labour Court to decide the reference on merits on the basis of the observations made hereinabove.

Consequently the writ petition is allowed. The award dated 19.3.2007 is quashed and set aside. The Labour Court is directed to adjudicate upon the reference made by the State Government on 2.7.2005 on merits. To avoid delay the parties are directed to make themselves available before the Labour Court on 26.11.2007.

November 1, 2007 (g) **(Rajiv Sharma), J**